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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. MAURICIO LUNA SOTO, Defendant and Appellant.	D046979 (Super. Ct. No. SCN047883)

APPEAL from a judgment of the Superior Court of San Diego County, John S. Einhorn and Joan P. Weber, Judges. Appeal dismissed.

In 1996, Mauricio Luna Soto entered a negotiated guilty plea to throwing a dangerous object at a vehicle. (Veh. Code, § 23110, subd. (b).) On April 4, 1997, the court sentenced him to prison for the 16-month lower term for the crime. On May 25, 2005, Soto filed a petition for a writ of *coram nobis*. He told the court that his guilty plea was not free, knowing, and voluntary because the court that accepted his guilty plea did not advise him that his guilty plea may result in deportation (see Pen. Code, § 1016.5,

subd. (a)),[1] and on October 23, 2003, he was ordered deported because of the conviction. The trial court denied the petition. Soto contends this was error.

Writ of Coram Nobis

"A writ of *coram nobis* is generally used to bring factual errors or omissions to the court's attention. (§ 1265.)" (*People v. Ibanez* (1999) 76 Cal.App.4th 537, 544.) The petitioner must show: "(1) that some fact existed which, without his fault or negligence, was not presented to the court at the trial and which would have prevented the rendition of the judgment; (2) that the new evidence does not go to the merits of the issues of fact determined at trial; and (3) that he did not know nor could he have, with due diligence, discovered the facts upon which he relies any sooner than the point at which he petitions for the writ." (*People v. Soriano* (1987) 194 Cal.App.3d 1470, 1474.)

We review a trial court's denial of a petition for writ of error *coram nobis* for abuse of discretion. (*People v. Superior Court (Zamudio*) (2000) 23 Cal.4th 183, 192.)

Timeliness of Appeal

The trial court's written notice of denial of the petition for a writ of *coram nobis* was filed on June 7, 2005. Soto did not file his notice of appeal until August 8, 2005, 62 days after the court filed its order denying the petition. A court of appeals only has jurisdiction to consider an appeal filed within 60 days of the appealable order. An untimely appeal must be dismissed. (Cal. Rules of Court, rule 30.1(a); *People v. Mendez* (1999) 19 Cal.4th 1084, 1094.)

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1 All further statutory references are to the Penal Code.

Even if Soto's appeal had been timely, Soto was properly advised of the possible immigration consequences of his guilty plea. Section 1016.5, in pertinent part, provides: "(a) Prior to acceptance of a plea of guilty . . . to any offense punishable as a crime under state law [with certain exceptions not relevant here], the court shall administer the following advisement on the record to the defendant: [¶] If you are not a citizen, you are hereby advised that conviction of the offense for which you have been charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States. [¶] (b) . . . If, after January 1, 1978, the court fails to advise the defendant as required by this section and the defendant shows that conviction of the offense to which defendant pleaded guilty . . . may have consequences for the defendant of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States, the court, on defendant's motion, shall vacate the judgment and permit the defendant to withdraw the plea of guilty . . . and enter a plea of not guilty. Absent a record that the court provided the advisement required by this section, the defendant shall be presumed not to have received the required advisement."

Here, the guilty plea form specifically advised Soto his conviction could result in deportation. A guilty plea form informing the defendant of possible immigration consequences of his plea is sufficient to meet the requirements of section 1016.5. (*People v. Ramirez* (1999) 71 Cal.App.4th 519, 522 (*Ramirez*).)

Soto argues the trial court erred by denying his petition for a writ of *coram nobis* because before accepting his 1996 guilty plea the court did not orally advise him of the

possible immigration consequences of that plea, as required by section 1016.5. We disagree.

In *Ramirez, supra*, 71 Cal.App.4th 519, the court concluded section 1016.5 does not require a trial court to orally advise a defendant of the possible immigration consequences of a guilty plea, and the written change of plea form signed by the defendant satisfied the section 1016.5 requirements. (*Id.* at pp. 521-523.) *Ramirez* noted, "there is no language [in section 1016.5] which states the advisements must be verbal, only that they must appear on the record and must be given by the court." (*Id*. at p. 521.) Citing *In re Ibarra* (1983) 34 Cal.3d 277, it noted the "Supreme Court has held a validly executed waiver form is a proper substitute for verbal admonishment by the trial court. [Citation .]" (*Ramirez, supra*, at p. 521.) Although the court in *In re Ibarra* expressly addressed the constitutionally-mandated advisements required under *Boykin v. Alabama* (1969) 395 U.S. 238 and *In re Tahl* (1969) 1 Cal.3d 122, *Ramirez* concluded its reasoning was equally applicable to legislatively-mandated advisements. (*Ramirez*, at pp. 521-522.) *Ramirez* also stated: "As the Third Appellate District noted in *People v. Quesada* (1991) 230 Cal. App.3d 525, the legislative purpose of section 1016.5 is to ensure a defendant is advised of the immigration consequences of his plea and given an opportunity to consider them. So long as the advisements are given, the language of the advisements appears in the record for appellate consideration of their adequacy, and the trial court satisfies itself that the defendant understood the advisements and had an opportunity to discuss the consequences with counsel, the legislative purpose of section 1016.5 is met. [Citation.] We agree with the analysis in *Quesada*." (*Ramirez, supra*, at p. 522.)

Because the record contained a copy of the change of plea form signed by the defendant, which warned of all three possible immigration consequences, and showed the trial court asked the defendant whether he reviewed the form with his attorney and understood it, *Ramirez* affirmed the trial court's denial of the defendant's section 1016.5 motion. (*Ramirez, supra*, 71 Cal.App.4th at p. 523.)

According to *Ramirez,* neither the language nor the purpose of section 1016.5 requires a trial court to orally advise a defendant of the possible immigration consequences before accepting a guilty plea. Rather, a written change of plea form describing those possible immigration consequences may, if duly signed and understood by the defendant after having an opportunity to review it and ask questions of his counsel, satisfy the section 1016.5 requirements. As with the *Boykin-Tahl* rule discussed in *In re Ibarra*, the underlying purpose of section 1016.5 is to ensure the defendant has actual knowledge of the possible immigration consequences of a guilty plea and has had an opportunity to make an intelligent choice to plead guilty. (*In re Ibarra, supra*, 34 Cal.3d at p. 285; *Ramirez, supra*, 71 Cal.App.4th at p. 522; *People v. Quesada, supra*, 230 Cal.App.3d at pp. 535-536; *People v. Gutierrez* (2003*)* 106 Cal.App.4th 167, 175.) A ritual oral recitation by a trial court of the possible immigration consequences of a guilty plea adds little to a defendant's actual knowledge of those consequences if the defendant has previously read and understood the written form describing those possible consequences and discussed the form's advisements with his or her counsel. (Cf. *In re Ibarra*, at p. 286.)

Soto argues a trial court must orally advise a defendant of the possible immigration consequences of pleading guilty because section 1016.5, subdivision (a) provides the court shall administer that advisement "on the record" to the defendant. However, the use of the phrase "on the record" does not preclude placement on the record of a signed change of plea form and subsequent questioning of the defendant by the court regarding that form. Although matters are often placed on the record by means of oral recitations that phrase, especially in the context of section 1016.5, does not preclude other means of placing the section 1016.5 advisement on the record. (Cf. *In re Ibarra, supra*, 34 Cal.3d at p. 286.)

Soto also argues the trial court must orally advise a defendant of the possible immigration consequences of pleading guilty because section 1016.5, subdivision (a) provides the court shall "administer" those advisements. However, we are unpersuaded that the word administer precludes compliance with section 1016.5 by means of a written change of plea form and subsequent questioning of the defendant by the court regarding that form, as occurred in this case. The record here reflects that the trial court did conduct a sufficient inquiry into Soto's review and understanding of the change of plea form and the opportunity to discuss it with counsel. The record shows at the 1996 change of plea hearing, the trial court confirmed Soto signed the change of plea form, had read and understood the form, and did not have any questions of the court regarding the form's contents. The court also confirmed that all of Soto's statements and answers on the form were true and correct. Soto' counsel joined in his waiver of rights. The record also contains a copy of Soto's change of plea form. In that form, Soto's counsel represented:

"I, the undersigned, state that I am the attorney for [Soto]; that I personally read and explained the contents of the above declaration to [Soto] and each item thereof . . . that I personally observed [Soto] fill in and initial each item, or read and initial each item to acknowledge the explanation of the contents of each; that I observed [Soto] date and sign the declaration . . . ."

Soto's counsel signed and dated those representations on the form. The record of his 1996 change of plea hearing supports a finding that Soto understood the form and had an opportunity to discuss it with his counsel.

The trial court did not abuse its discretion by denying Soto's petition for a writ of *coram nobis*.

DISPOSITION

Soto's appeal from denial of a writ of *coram nobis* is dismissed as untimely, and had it been timely it would be affirmed.

BENKE, Acting P. J.

WE CONCUR:

HALLER, J.

McDONALD, J.